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TO AMEMBASSY SANTIAGO IMMEDIATE

C O N F I D E N T I A L STATE 163581

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E.O. 11652:GDS

TAGS: PFOR EIND, CI

SUBJ: CHILE BILATERAL TALKS

1. FIRST DAY OF BILATERAL TALKS TOOK PLACE IN WASHINGTON AUGUST 16 AT CHILEAN EMBASSY. EX-DEFENSE MINISTER TOHA AND MINING VICE-MINISTER SOTO WERE PRINCIPAL CHILEAN REPRESENTATIVES. U.S. REPRESENTED BY ASSISTANT SECRETARY KUBISCH AND ASSISTANT SECRETARY TREASURY HENNESSY.
2. ATMOSPHERICS PROJECTED BY TOHA CLEARLY AIMED AT CREATING IMPRESSION OF SERIOUS, COMPROMISE OFFER BY GOC TO NARROW THE DIFFERENCES BETWEEN ORIGINAL CHILEAN PROPOSAL TO USE 1914 PROCEDURE AND SUBSEQUENT U.S. PROPOSAL OF BINDING ARBITRATION. CHILEANS STATED GOC UNABLE TO ACCEPT U.S. PROPOSAL DUE TO JURIDICAL, CONSTITUTIONAL AND POLITICAL IMPEDIMENTS. THEY INSISTED ACCEPTANCE U.S. PROPOSAL COULD NOT BE MADE IN GOOD FAITH SINCE IT WOULD PROVE UNPRODUCTIVE IN THE END AND FAIL TO ACHIEVE EFFECTIVE SOLUTION.

3. CHILEAN COMPROMISE OFFER WOULD INTER ALIA MODIFY 1914 PROCEDURE RE COMPOSITION OF COMMISSION, REDUCE TIME FRAME

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FOR COMMISSION STUDY, AND PROVIDE FOR PRIOR AGREEMENT BETWEEN

PARTIES ON AGENDA TO BE SUBMITTED TO COMMISSION. NOVEL FEATURE OF PROPOSAL IS TO HAVE COMMISSION FOCUS ON QUESTION OF WHETHER DENIAL OF JUSTICE EXISTS DUE TO COPPER TRIBUNAL'S REFUSAL REVIEW PRESIDENT ALLENDE'S EXCESS PROFITS DECISION. IF COMMISSION SO DETERMINED, COPPER TRIBUNAL WOULD RECONSIDER SUBJECT, ACCORDING TO CHILEAN SCENARIO, AND IF IT REACHED POSITIVE RULING WAY WOULD BE OPEN FOR CHILEAN EXECUTIVE TO MAKE A DECISION ON COMPENSATION WITHOUT REFERENCE TO CHILEAN CONGRESS WHICH CHILEANS ALLEGED WOULD CONSTITUTE POLITICAL "SUICIDE".

4. U.S. SIDE NOTED THAT INTRODUCTION OF COPPER TRIBUNAL INTO SCENARIO AND LONG STRING OF DETERMINATIONS OF UNCERTAIN OUTCOME COULD BE REGARDED AS RETROGRESSION IN CHILEAN POSITION. WE WERE CAREFUL, HOWEVER, TO AVOID ANY INDICATION OF REJECTION. IN RESPONSE TO QUESTIONS, CHILEANS INSISTED THAT IF SCENARIO UNFOLDED IN SERIES OF DETERMINATIONS FINDING DENIAL OF JUSTICE AND ACKNOWLEDGING PAYMENT DUE COPPER COMPANIES, PRESIDENT ALLENDE WOULD CARRY OUT DECISION OF DULY CONSTITUTED CHILEAN COPPER TRIBUNAL. CHILEANS CAREFULLY AVOIDED ANY PRIOR COMMITMENT TO MAKE COMPENSATION PAYMENT. CHILEANS ALSO SUGGESTED MINORITY DISSENT BY SUPREME COURT REPRESENTATIVE ON COPPER TRIBUNAL'S ORIGINAL DECISION SET STAGE FOR NEW DECISION BY TRIBUNAL TO RENEW EXCESS PROFITS ISSUE.

5. CHILEAN PORTRAYED NEW FORMULA AS BEST GOC COULD COME UP WITH IN ITS CONTINUING DESIRE RESOLVE THIS ISSUE WITHIN CONTEXT OF CHILEAN POLITICAL AND JURIDICAL "REALITY" AND STATED IT HAD PRESIDENT ALLENDE'S PERSONAL BLESSING. IN FIRST PRESENTATION OF FORMULA, TOHA ALSO CALLED FOR "POSITIVE" ATTITUDE BY USG IN INTERNATIONAL LENDING INSTITUTIONS AND IN PARIS CLUB PROCEEDINGS AND SAID GOC WOULD EXPECT USG TO USE ITS INFLUENCE ON COPPER COMPANIES TO PERSUADE THEM NOT TO "COMPLICATE" SITUATION (NOT CLEAR IF CHILEANS EXPECT US TO GET COMPANIES TO WITHDRAW OR SUSPEND LEGAL ACTIONS IN U.S. AND ELSEWHERE BUT THIS CLEARLY IMPLIED).

6. U.S. SIDE EMPHASIZED THAT USG STRONGLY PREFERRED GOC
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SETTLE DIRECTLY WITH COPPER COMPANIES, THAT U.S. PRIVATE INVESTMENTS ABROAD TOTAL MORE THAN 80 BILLION DOLLARS INVOLVING THOUSANDS OF U.S. PRIVATE FIRMS AND THAT OUR WILLINGNESS TO ENTER INTO THIRD PARTY MECHANISM WAS MADE IN JUNE AT LIMA ONLY IN RESPONSE TO CHILEAN INSISTENCE ON THIRD PARTY MECHANISM AND AFTER LENGTHY CONSIDERATION AT THE HIGHEST LEVELS OF OUR GOVERNMENT. ALSO REMINDED CHILEANS THAT BINDING ARBITRATION PROPOSAL REPRESENTS

MAJOR U.S. CONCESSION WHICH COULD AFFECT BILLIONS OF
DOLLARS OF U.S. FOREIGN INVESTMENTS. IN RETURN FOR
THIS RISK, ESSENTIAL ELEMENT IN U.S. POSITION WAS
PROCEDURE WHICH WOULD DEFINITELY LEAD TO FINAL AND
JUST SOLUTION OF THIS DISPUTE. QUESTION WE ASKED
THEREFORE WAS WHAT GUARANTEE DOES NEW CHILEAN PROPOSAL
OFFER FOR FINAL AND CONCRETE SOLUTION?

7. SECOND DAY'S MEETING SCHEDULED TO BEGIN AT 10:30 A.M.
AUGUST 17. CHILEANS DEPARTING WASHINGTON LATE AFTERNOON
AUGUST 17. ROGERS

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